

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 298 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

SURAT DIAMONDS INDUSTRIES LTD.

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner
MR KH KAJI for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 12/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following questions have been referred to this Court by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A', for its opinion under the provisions of sec. 256(2) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

"1. Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the activity of conversion of rough diamonds into polished/finished diamonds does amount to manufacture of an article?

2. Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the machinery and plant installed for the purpose of conversion of rough diamonds into polished/finished diamonds is entitled to investment allowance under sec. 32A of the Act?"

2. The facts giving rise to the present reference in a nutshell are as under :

3. The respondent-assessee is in the business of polishing rough diamonds and in the course of its business, after doing certain processes, it converts rough diamonds into polished diamonds. The respondent assessee had claimed benefits under the provisions of sec. 32A of the Act contending that it was doing business of manufacturing diamonds and therefore it was entitled to deduction of investment allowance under the provisions of sec. 32A of the Act. The Assessing Officer had rejected the claim and therefore the assessee had filed an appeal before the CIT (Appeals). The CIT (Appeals) partly allowed the appeal but being aggrieved by the order passed in the appeal, the assessee had approached the Tribunal. Even the revenue had approached the Tribunal against the order passed by the CIT (Appeals) by filing an appeal.

4. After hearing the concerned parties, the Tribunal came to the conclusion that the assessee was entitled to deduction of investment allowance under the provisions of sec. 32A of the Act for the reason that the assessee was manufacturing diamonds from rough diamonds by doing certain processes.

5. The question, which has been referred to this

Court is whether conversion of rough diamonds into polished diamonds can be said to be manufacture or production of an article or a thing. If the ultimate conclusion is to the effect that the assessee was in the business of manufacture or production of any article or thing, the assessee would be entitled to deduction of investment allowance under the provisions of sec. 32A of the Act.

6. Learned advocate Shri BB Naik appearing for the revenue has mainly relied upon the judgment delivered by the Hon'ble Supreme Court in the case of CIT v. Gem India Manufacturing Co., 249 ITR 307. It has been submitted by him that the Hon'ble Supreme Court has decided in the said judgment that the process whereby raw uncut diamonds are cut and polished, which yields the polished diamonds, cannot be said to amount to manufacture or production of an article or a thing for the purpose of obtaining the benefit of deduction under sec. 80-I of the Act. In the instant case, we are concerned with the benefits which the assessee has claimed under sec. 32A of the Act. Looking to the ratio laid down by the Hon'ble Supreme Court in the case referred to hereinabove, it has been submitted by learned advocate Shri Naik that the process of cutting or polishing diamonds would not amount to a manufacturing activity and in the circumstances, the Tribunal was in error in coming to the conclusion that the assessee was entitled to the benefit under the provisions of sec. 32A of the Act.

7. On the other hand, learned advocate Shri Kaji appearing for the respondent assessee has mainly submitted that the judgment on which learned advocate Shri Naik has relied upon would not apply to the instant case for the reason that sufficient evidence was not adduced and details with regard to the processes which are being done for the purpose of converting raw diamonds into polished diamonds were not on the record and were not duly explained in the case which was decided by the Supreme Court and, therefore, in absence of sufficient evidence, the Supreme Court had come to the conclusion that cutting and polishing of raw diamonds would not amount to a manufacturing process. He has drawn our attention to the following portion of the judgment:

"It would appear that no material had been placed on the record before the Tribunal upon which it could have reached the conclusions that, either in common or in commercial parlance, raw diamonds

were not the same thing as polished and cut diamonds, and that they were different entities in the commercial world. An ipse dixit of the Tribunal is not the best foundation for a decision."

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"There is no material on the record upon which such a conclusion can be reached."

8. In addition to the above submission made by learned advocate Shri Kaji appearing on behalf of the respondent assessee, he has submitted that so as to ascertain whether the respondent assessee is entitled to benefit under sec. 32A of the Act, one has to see whether the assessee is manufacturing diamonds or is engaged in a manufacturing activity. For the purpose of showing that the assessee was engaged in a manufacturing activity, he has drawn out attention to several judgments defining the term "manufacture". Looking to the course which we propose to adopt for taking a final decision in the instant case, we do not think it necessary to deal with any of the judgments relied upon and referred to by the learned advocate.

9. Upon perusal of the paper-book, we have found that the Tribunal has not discussed the entire evidence which was adduced before the Assessing Officer and the Tribunal. It is pertinent to note that the judgment on which the learned advocate appearing for the revenue is relying upon was decided in a particular manner in absence of any evidence. It appears that the Tribunal was not having sufficient material in that case. Looking to the said fact and in view of the peculiar facts of the present case, we are of the view that when the Tribunal and the Assessing Officer were having sufficient material before them, it was the duty of the Tribunal to discuss the evidence, which was adduced before it and the Assessing Officer. We are of the view that the Tribunal has not sufficiently discussed the evidence on record and therefore certain factual aspects, which are absolutely necessary for the purpose of determining whether the activity in which the assessee was engaged is a manufacturing activity, cannot be decided.

10. For instance, learned advocate Shri Kaji has drawn our attention to page 33 of the paper-book (Ex. E), which pertains to the details given by the assessee with regard to the processes which are required to be done for converting rough diamonds into cut and polished

diamonds. Upon perusal of the order of the Tribunal, we do not see any discussion pertaining to the processes, which have been referred to in the said Exhibit.

11. Moreover, upon perusal of the order passed by the Assessing Officer, it appears that the assessee had placed on record certain certificates issued by government agencies to the effect that the assessee was involved in a manufacturing activity. The Tribunal is absolutely silent on the said certificates. In absence of discussion on the evidence, which was adduced before the Assessing Officer by the assessee, it would be difficult for this Court to come to a final conclusion whether the assessee was engaged in manufacture or production of an article or a thing.

12. In the course of arguments, our attention was drawn to the judgment delivered by the Hon'ble Supreme Court in the case of Empire Industries Ltd & Anr. v. Union of India and others, 162 ITR 846. The Hon'ble Supreme Court, after referring to the judgment delivered in case of McNicol v. Pinch (1906) 2 KB 352, has observed on page 869 that,

"It is well-settled that one cannot absolutely make a thing by hand in the sense that nobody can create matter by hand, it is the transformation of a matter into something else and that something else is a question of degree, whether that something else is a different commercial commodity having its distinct character, use and name and commercially known as such."

13. Thus, the Hon'ble Supreme Court has expressed an opinion to the effect that whenever a different commercial commodity is made or when one commodity is transformed into something else, which is known as a different commercial commodity, it can be said that the concerned person, by doing some process is manufacturing a different thing. In the instant case, though evidence was adduced before the Assessing Officer and the Tribunal on the subject, we do not find any discussion in the orders passed by the said authorities and therefore it is not possible to know anything about the processes done by the assessee for the purpose of conversion of rough diamonds into cut and polished diamonds and whether rough and polished diamonds are different commercial commodities.

14. Looking to the fact that we do not have sufficient evidence for deciding whether a different

commodity has been created upon processing rough diamonds, we are of the view that the Tribunal should be asked to reconsider the matter after permitting the parties to lead additional evidence. The Hon'ble Supreme Court has observed in case of CIT v. Indian Molasses Co. P. Ltd., 78 ITR 474 that in such a case, two courses are open to the court. One, to call for a supplementary statement of the case from the Tribunal or to decline to answer the question raised by the Tribunal. The Supreme Court has further observed in the said case that

"If we direct the Tribunal to submit a supplementary statement of the case, the Tribunal will, according to the decisions of this court in New Jehangir Vakil Mills Ltd. v. Commissioner of Income-tax, Petlad Turkey Red Dye Works Co. Ltd. v. Commissioner of Income-tax and Keshav Mills Co. Ltd. v. Commissioner of Income-tax, be restricted to the evidence on the record and may not be entitled to take additional evidence. That may result in injustice."

15. In view of the above observation made by the Hon'ble Supreme Court in case of Indian Molasses Co. P. Ltd. (supra), we think that it would be in the interest of justice to permit the parties to lead additional evidence before the Tribunal so that ultimately correct facts can be placed on record and in the light of the facts which might be placed before it, the Tribunal can take appropriate decision.

16. In the circumstances, it is directed that the Tribunal shall hear the appeal again and dispose of the same in the light of the observations made hereinabove after permitting the parties to give additional evidence. As we are concerned with a very old reference, we are sure that the Tribunal shall make sufficient efforts to see that the appeal is decided as expeditiously as possible.

17. In view of the above direction, the reference is returned unanswered and is disposed of subject to the above directions with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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